



p r e s e n t s

Jurisdiction and Other Current Environmental Issues in Bankruptcy

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Jurisdictional Issues

- Statutory authority of bankruptcy courts to finally adjudicate “core” proceedings under 28 U.S.C. § 157(b)(2) limited by Article III
 - *Stern v. Marshall*, 131 S. Ct. 2594 (2011)
- But consent to jurisdiction constitutionally permissible
 - *Wellness Intern. Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015)

Jurisdictional Issues - GM

- “Related to” jurisdiction after confirmation - 28 U.S.C. § 1334(b), circuit split:
 - “Close nexus” test: 3d & 9th, 2d & 4th (?)
 - Plan "implementation/execution": 11th
- *In re Motors Liquidation Co.* (2d Cir.)
 - Issues: Due Process, Post-confirmation jurisdiction
 - Oral argument held Mar. 15, 2016

Asbestos Trusts in Chapter 11

- 11 U.S.C. § 524(g)
 - "Channeling injunctions"
 - 1994 "rule of construction"
- Due Process: Orders not enforceable unless "sufficient notice and representation" in proceedings that led to entry
 - *In re Johns-Manville Corp.*, 2016 WL 1070846 (S.D.N.Y. Mar. 14, 2016)

Abandonment/Rejection Issues

- Power to abandon limited
 - *Midlantic Nat. Bank v. New Jersey Dept. of Environmental Protection*, 106 S. Ct. 755 (1986)
- Debtor allowed to reject executory "gathering contracts" despite contention that obligations ran with land
 - *In re Sabine Oil & Gas Corp.*, 2016 WL 890299 (Bankr. S.D.N.Y. Mar. 8, 2016)

Abandonment/Rejection Issues

- Current Use of Trusts, Abandonment, Rejection in Environmental Cases

Q & A

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